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May 21, 2018

David J. Smith
Clerk of Court
U.S. Court of Appeals
for the Eleventh Circuit
56 Forsyth St. N.W.
Atlanta, GA 30303

Re: *Cowabunga, Inc. v. NLRB*
Case Nos. 16-10932 & 16-11391

Dear Mr. Smith:

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure, Petitioner/Cross-Respondent Cowabunga, Inc. (“Cowabunga”), hereby advises the Court of the United States Supreme Court’s May 21, 2018 decision in *Epic Systems Corp. v. Lewis*, 584 U.S. ___, No. 16-285 (U.S. May 21, 2018). The Supreme Court’s decision squarely addresses—and is dispositive of—the class waiver issue presented to this Court in the above-referenced matter.

In *Epic Systems*, the Supreme Court held that class and collective action waivers in employment arbitration agreements do not violate the National Labor Relations Act (“NLRA”) and must be enforced according to their terms under the Federal Arbitration Act (“FAA”). In reaching this holding, the Supreme Court found that neither the FAA’s savings clause nor the NLRA suggested otherwise. Cowabunga specifically advanced these arguments in its initial and reply briefs, as well as at oral argument. (*See* Initial Brief, pp. 11-24, 26-27; Reply Brief, pp. 2-15).

Given the Supreme Court’s decision that class and collective action waivers in employment arbitration agreements are lawful and enforceable, the Court should grant Cowabunga’s petition for review and deny the National Labor Relations Board’s (“NLRB”) cross-application for enforcement of its underlying order.

Sincerely,

s/Reyburn W. Lominack, III

Reyburn W. Lominack III
Partner
For FISHER & PHILLIPS LLP

cc: All Counsel (via CM/ECF)

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